

FILED 11 APR 11 7:53AM DDC-ORM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

JERRY DWIGHT BLANEY,

Petitioner,

Civil No. 11-163-CL

v.

REPORT AND
RECOMMENDATION

STATE OF OREGON,

Respondent.

CLARKE, Magistrate Judge.

In an Order (#6) entered February 10, 2011, petitioner was advised that his claims were properly construed as claims for habeas corpus relief under 28 U.S.C. 2254. Petitioner was allowed until March 14, 2011, to show cause why his complaint (construed as a petition for writ of habeas corpus) should not be dismissed on the ground that petitioner is not "in custody" for purpose of seeking habeas relief.

On March 7, 2011, petitioner filed a "Written Objection under Extraordinary Circumstances" (#7) which is not responsive to the court's order. In a nutshell, petitioner's response is best

characterized as a rant about the allegedly “dishonorable, unrighteous, criminal behavior” of the trial judge that presided over petitioner’s criminal proceedings.

Accordingly, petitioner’s petition should be denied for the reasons set forth in the court’s previous order, *viz.*, that petitioner is not in custody for purposes of seeking habeas corpus relief.

Liberally construed as an attempt to allege a claim under 42 U.S.C. §1983, plaintiff’s claim should be denied because defendant is absolutely immune from liability to plaintiff under principles Eleventh Amendment and/or judicial immunity. *See, Brooks v. Sulpher Springs*, 951 F.2d 1050, 1053 (9th Cir. 1991) [Eleventh Amendment]; *Ashleman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986); *Moore v. Brewster*, 96 F.3d 1240, 1243-44 (9th Cir. 1996), *cert. Denied*, 117 S.Ct. 963 (1997) [judicial].

This proceeding should be dismissed.

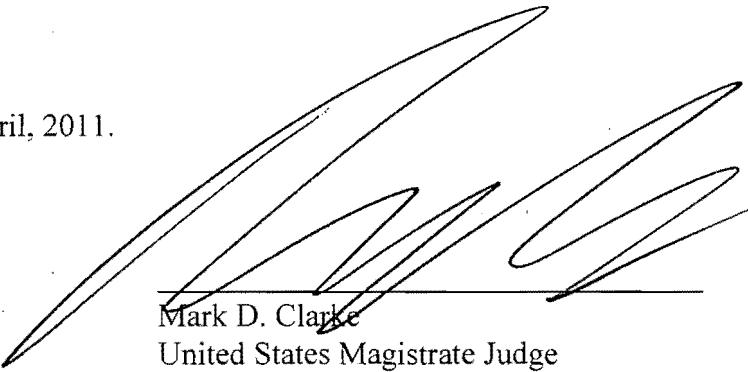
This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court’s judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party’s right to de novo consideration of the factual issues and will constitute a waiver of a party’s right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge’s recommendation.

//

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 8 day of April, 2011.


Mark D. Clarke
United States Magistrate Judge